

2019-21760 / Court: 165

CAUSE NO. _____

LAWRENCE and JOAN SINGER

§ IN THE DISTRICT COURT OF

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Plaintiffs,

v.

HARRIS COUNTY, TEXAS

OCCIDENTAL FIRE & CASUALTY
COMPANY OF NORTH CAROLINA*Defendant.*

JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COME NOW, Plaintiffs, LAWRENCE AND JOAN SINGER, and file this, Plaintiffs' Original Petition against Defendant, OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA, and, for cause of action, would respectfully show this Honorable Court the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiffs intend for discovery to be conducted under Level 1 of Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE. This case involves a first-party insurance policy dispute concerning damages attributable to a severe wind and hail storm. This dispute involves legal issues originating from the TEXAS INSURANCE CODE, common law, and recent Texas case law. It will include discovery regarding claims-handling practices, coverage decisions, adjustment/payment of claims, including Plaintiffs' claim, as well as and the systematic approach by Occidental Fire & Casualty Company of North Carolina and its adjusters to the handling of catastrophic loss property damage claims arising from wind and hail storms.



II. PARTIES

2. Plaintiffs, Lawrence and Joan Singer, are Texas residents who reside in Harris County, Texas.

3. Defendant, Occidental Fire & Casualty Company of North Carolina (“Occidental”), is a Foreign insurance company licensed and authorized to engage in the business of insurance in the State of Texas. According to the Texas Department of Insurance, Occidental has a Disciplinary Action Company Status and may be served with process by certified mail, return receipt requested, care of its registered agent: **C T Corporation System, 1999 Bryan Street Suite 900, Dallas TX 75201 -3136.**

III. JURISDICTION & VENUE

4. This Court has jurisdiction over this cause of action because the amount in controversy is within the jurisdictional limits of the Court. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiffs state they seek only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

5. This Court has personal jurisdiction over Occidental because Occidental is an insurance company licensed to do business in Texas and Plaintiffs’ causes of action arise out of Occidental’s business activities in this State.

6. Venue is proper in Harris County because the insured property is located in Harris County and all or a substantial part of the events giving rise to this lawsuit occurred in Harris County. TEX. CIV. PRAC. & REM. CODE § 15.032.

IV. FACTS

7. Plaintiffs own the residential property at 12022 Cypress Creek Lakes Drive in Cypress, Harris County, Texas (the “Property”). Occidental sold, and Plaintiffs paid for, a Texas homeowners’ insurance policy (the “Policy”) to protect and insure Plaintiffs’ dwelling, other structures, personal property, and other items applicable to the Property.

8. On or about March 29, 2017, a storm accompanied by high winds and hail caused significant and widespread damage in and around Cypress, Texas, and to Plaintiffs’ Property, specifically. Plaintiffs’ roof sustained extensive wind damage to its entire surface and to the underlying structure/framing during the March 29th storm. Evidence of hail wind damage is readily apparent from even a casual view.

9. Following the storm, Plaintiffs promptly and timely reported their Property claim (the “Claim”) with Occidental under the Policy and asked Occidental to cover the cost of repairs required to return the Property to its pre-loss condition, including, but not limited to, replacement of the roof. Plaintiffs are entitled to these benefits under the Occidental Policy as it specifically covered Plaintiffs’ dwelling for hail and wind-related damage.

10. Although Plaintiffs notified and, later, reminded Occidental numerous times of the significant widespread roof damage and major leaks throughout the interior of the Property, Occidental failed to fully and adequately inspect the damaged areas of Plaintiffs’ property, including the roof, among other items and areas. Occidental’s failure to record the full extent of the hail and wind-damaged Property resulted in an improperly under-scoped and consequently undervalued evaluation for repairs.

11. To date, Occidental has refused to share the basis behind its conclusion that the amount of storm-related Property damage is less than the Policy deductible. Instead, Occidental

has withheld its estimates and selectively provided Plaintiffs with only a copy of a report from Occidental's consulting engineer.

12. Plaintiffs contend that, upon information and belief, Occidental set out and overtly sought to under-scope, underpay, and ultimately deny Plaintiffs' Claim for covered damages. Plaintiffs have suffered actual damages from Occidental's wrongful acts and omissions as set forth above and further described herein.

V. CAUSES OF ACTION

Breach of Contract against Occidental

13. An insurance policy is considered a contract under Texas law. Occidental failed to perform its contractual duties to adequately compensate Plaintiffs in accordance the terms of the Policy that it wrote and sold to Plaintiffs. Specifically, Occidental refused to pay the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover the damaged property, and all conditions precedent to recovery upon the Policy had been carried out and accomplished by Plaintiffs. Occidental's conduct constitutes a breach of the insurance contract between Occidental and Plaintiffs.

Non-Compliance by Occidental with the Texas Insurance Code, Unfair Settlement Practices

14. Occidental's conduct constitutes multiple violations of the TEXAS INSURANCE CODE, UNFAIR SETTLEMENT PRACTICES. TEX. INS. CODE §541.060(a). All violations under this provision are made actionable by TEX. INS. CODE §541.151.

15. Falsehoods and misrepresentations under Texas law may be communicated by actions as well as spoken word; therefore, deceptive conduct is equivalent to a verbal representation. Occidental's misrepresentations by means of deceptive conduct include, but are not limited to: (1) failing to conduct a reasonable inspection and investigation of Plaintiffs'

damages; (2) stating that Plaintiffs' damages were less extensive or severe than they actually were, resulting in the undervaluing of Plaintiffs' damages; (3) using its adjuster's and/or engineer's own statements and conclusions about the scope and degree of the damage as a pretext for effectively denying covered damages and/or underpaying damages; and (4) failing to provide an adequate explanation for the inadequate payment(s) Plaintiffs in fact received.

16. Occidental's unfair settlement practice, as described above, of misrepresenting—by words and acts/omissions—to Plaintiffs material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(1).

17. Occidental's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the Claim, even though its liability under the Policy was reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(2)(A).

18. Occidental failed to explain to Plaintiffs the reasons for failing to include all covered damages in its evaluation and/or payment(s) on the Claim. Furthermore, Occidental did not communicate that future settlements or payments would be forthcoming to pay for the entire amount of Plaintiffs' loss, nor did it provide any explanation for the failure to adequately settle Plaintiffs' Claim. Occidental's conduct is a violation of the TEXAS INSURANCE CODE, UNFAIR SETTLEMENT PRACTICES. TEX. INS. CODE §541.060(a)(3).

19. Although promptly reported by Plaintiffs to Occidental, Occidental did not properly inspect the Property and failed to account for and/or undervalued many of Plaintiffs' damages, both exterior and interior. Occidental's unfair settlement practice, as described above,

of refusing to pay Plaintiffs' full Claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(7).

**Non-Compliance by Occidental with the Texas Insurance Code,
Prompt Payment of Claims Act**

20. Occidental's conduct constitutes multiple violations of the TEXAS INSURANCE CODE, PROMPT PAYMENT OF CLAIMS ACT. All violations made under this provision are made actionable by TEX. INS. CODE §542.060.

21. Occidental's failure—and thus continuing delay—to remit full payment of the amounts owed on Plaintiffs' Claim following its receipt of all items, statements, and forms reasonably requested and required, as described above, constitutes a non-prompt payment of the Claim. TEX. INS. CODE §542.058.

Breach of the Duty of Good Faith and Fair Dealing

22. Occidental's conduct constitutes a breach of the common law duty of good faith and fair dealing that a Texas insurer owes to its policy holders on account of the disparity in bargaining power between an insurance company and its individual insureds with respect not only to the drafting of the contract of insurance itself, but also with respect to the handling and payment of insured claims.

23. Occidental's failure, as described above, to adequately and reasonably investigate and evaluate Plaintiffs' Claim, despite the fact that at the very same time, Occidental knew, or should have known by the exercise of reasonable diligence, that its liability was reasonably clear, constitutes a breach of Occidental's duty of good faith and fair dealing to Plaintiffs, which is both non-delegable and continues to exist until the relationship between the parties is ultimately changed to that of judgement debtor and judgement creditor, respectively.

VI. CONDITIONS PRECEDENT

24. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred and/or Occidental waived the same. This includes, but is not limited to, providing notice pursuant to TEXAS INSURANCE CODE 542A and pre-litigation alternative dispute resolution, if any.

VII. DAMAGES

25. Plaintiffs would show that all the acts as alleged herein, taken together or singularly, constitute the producing cause of the damages sustained by Plaintiffs.

26. As previously mentioned, Plaintiffs' covered losses have not been properly addressed or paid, which has prevented Plaintiffs from making necessary repairs, thus causing further, consequential damage, to the Property while also causing undue hardship and a burden on Plaintiffs. These damages and losses are a direct result of Defendants' mishandling of Plaintiffs' Claim in violation of the terms of the Policy at issue and of the laws set forth above.

27. For breach of contract, Plaintiffs are entitled to regain the benefit of their bargain with respect to their purchase of the Policy, which is the amount of their Claim, together with attorneys' fees under TEXAS CIVIL PRACTICE & REMEDIES CODE Section 38.001.

28. For noncompliance with the TEXAS INSURANCE CODE, UNFAIR SETTLEMENT PRACTICES, Plaintiffs are entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy, mental anguish, court costs, interest, and attorneys' fees.

29. For noncompliance with the TEXAS INSURANCE CODE, PROMPT PAYMENT OF CLAIMS ACT, Plaintiffs are entitled to interest on the amount of the Claim as damages at the rate

determined under TEX. INS. CODE §542.060, together with reasonable and necessary attorneys' fees.

30. For breach of common law duty of good faith and fair dealing, Plaintiffs are entitled to compensatory damages, including all forms of loss resulting from Occidental's breach of its Duty, such as additional costs, economic hardship, additional losses resulting from nonpayment of the amount owed, exemplary damages, and damages for emotional distress.

31. For the prosecution and collection of this Claim, Plaintiffs have been compelled to engage the services of the attorneys and law firms whose names are subscribed to this pleading. Therefore, Plaintiffs are entitled to recover a sum for the reasonable and necessary services of Plaintiffs' attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Texas Supreme Court.

VIII. JURY DEMAND

32. Plaintiffs request that all causes of action alleged herein be tried before a jury consisting of citizens residing in Harris County, Texas. Plaintiffs hereby tender the appropriate jury fee.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that upon trial hereof, said Plaintiffs have and recover such sums as would reasonably and justly compensate them in accordance with the rules of law and procedure, as to actual damages, treble damages under the TEXAS INSURANCE CODE, and all punitive and exemplary damages as may be found. In addition, Plaintiffs request the award of attorneys' fees for the trial and any appeal of this cause, for all costs of Court on their behalf expended, for pre-judgment and post-judgment interest as allowed

by law, and for all such other and further relief, whether by law or at equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

WILLIAMS KHERKHER HART BOUNDAS LLP

By: /s/ Sean H. McCarthy

Sean H. McCarthy

State Bar No. 24065706

P. Griffin Bunnell

State Bar No. 24080815

8441 Gulf Freeway, Ste 600

Houston, TX 77017

Telephone: 713-230-2322

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Email: smccarthy@williamskherkher.com

E-mail: gbunnell@williamskherkher.com

AND

THE COOK LAW FIRM, PLLC

Andrew C. Cook

State Bar No. 24057481

8441 Gulf Freeway, Sixth Floor

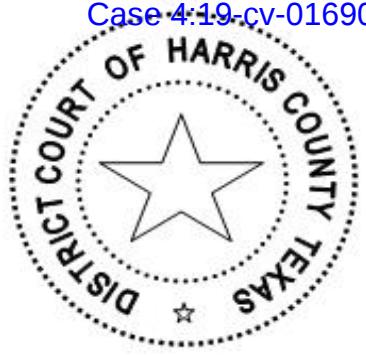
Houston, Texas 77017

Telephone: (713) 230-2366

Facsimile: (713) 643-6226

Email: acc@texinsurancelaw.com

ATTORNEYS FOR PLAINTIFFS



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 1, 2019

Certified Document Number: 84506291 Total Pages: 9

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

LAWRENCE and JOAN SINGER v OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA
STYLED

(e.g., John Smith v. All American Insurance Co. in re Mary Ann Jones, In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name: P. GRIFFIN BUNNELL	Email: gbunnell@williamskherkher.com	Plaintiff(s)/Petitioner(s): LAWRENCE AND JOAN SINGER	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other
Address: 8441 Gulf Fwy, 6th Floor	Telephone: 713-230-2200	Defendant(s)/Respondent(s): OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH AMERICA	Additional Parties in Child Support Case: <input checked="" type="checkbox"/> Custodial Parent <input checked="" type="checkbox"/> Non-Custodial Parent <input checked="" type="checkbox"/> Presumed Father
City/State/Zip: Houston, Texas 77017	Fax: 713-643-6226		[Leave additional page as necessary to list all parties]
Signature: <i>/s/ P. Griffin Bunnell</i>	State Bar No: 24080815		

2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil

Family Law

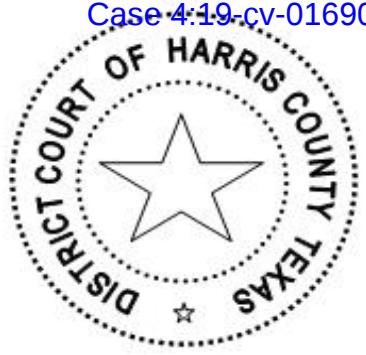
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (most Title IV-D)	
Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <input type="checkbox"/> Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <input type="checkbox"/> Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order	
Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure	<input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract	<input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product:	<input type="checkbox"/> Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Null <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus Pre-indictment <input type="checkbox"/> Other	<input type="checkbox"/> Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other	<input type="checkbox"/> Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foresign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Torts/Inference <input type="checkbox"/> Other			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		Probate & Mental Health <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other		

3. Indicate procedure or remedy, if applicable (may select more than 1):

Appeal from Municipal or Justice Court <input type="checkbox"/>	Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment <input type="checkbox"/>	Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover <input type="checkbox"/>
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4. Indicate damages sought (do not select if it is a family law case):

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/>	Less than \$100,000 and non-monetary relief <input type="checkbox"/>	Over \$100,000 but not more than \$200,000 <input type="checkbox"/>	Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/>	Over \$1,000,000 <input type="checkbox"/>
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I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 1, 2019

Certified Document Number: 84506292 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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Marilyn Burgess

HARRIS COUNTY DISTRICT CLERK

201 Caroline | P.O. Box 4651 | Houston, Texas 77210-4651 | 832-627-5800 | www.hcdistrictclerk.com

Request for Issuance of Service

CASE NUMBER: _____ CURRENT COURT: _____

Name(s) of Documents to be served: **PLAINTIFF'S ORIGINAL PETITION**

FILE DATE: _____ Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: **OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA**

Address of Service: **1999 BRYAN STREET, SUITE 900**

City, State & Zip: **DALLAS TEXAS 75201**

Agent (if applicable) **C. T. CORPORATION SYSTEMS**

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

<input checked="" type="checkbox"/> Citation	<input type="checkbox"/> Citation by Posting	<input type="checkbox"/> Citation by Publication	<input type="checkbox"/> Citations Rule 106 Service
<input type="checkbox"/> Citation Scire Facias	Newspaper _____		
<input type="checkbox"/> Temporary Restraining Order	<input type="checkbox"/> Precept	<input type="checkbox"/> Notice	
<input type="checkbox"/> Protective Order			
<input type="checkbox"/> Secretary of State Citation (\$12.00)	<input type="checkbox"/> Capias (not an E-Issuance)	<input type="checkbox"/> Attachment	
<input type="checkbox"/> Certiorari	<input type="checkbox"/> Highway Commission (\$12.00)		
<input type="checkbox"/> Commissioner of Insurance (\$12.00)	<input type="checkbox"/> Hague Convention (\$16.00)	<input type="checkbox"/> Garnishment	
<input type="checkbox"/> Habeas Corpus	<input type="checkbox"/> Injunction	<input type="checkbox"/> Sequestration	
<input type="checkbox"/> Subpoena			
<input type="checkbox"/> Other (Please Describe) _____			

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

<input type="checkbox"/> ATTORNEY PICK-UP (phone) _____	<input type="checkbox"/> E-Issuance by District Clerk (No Service Copy Fees Charged)
<input checked="" type="checkbox"/> MAIL to attorney at: <u>address below</u>	<i>Note:</i> The email registered with EfileTexas.gov must be used to retrieve the E-Issuance Service Documents. Visit www.hcdistrictclerk.com for more instructions.
<input type="checkbox"/> CONSTABLE	
<input type="checkbox"/> CERTIFIED MAIL by District Clerk	
<input type="checkbox"/> CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____	Phone: _____
<input type="checkbox"/> OTHER, explain _____	

Issuance of Service Requested By: Attorney/Party Name: **P. Griffin Bunnell** Bar # or ID **24080815**

Mailing Address: **8441 Gulf Freeway, 6th Floor**

Phone Number: **713-230-2356 (direct line)**



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 1, 2019

Certified Document Number: 84506293 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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RETURN OF SERVICE

Notice: This document contains sensitive data

Court	District Court 165th Judicial District of Harris County, Texas	
Plaintiff	LAWRENCE AND JOAN SINGER	Cause # 201921760
Defendant(s)	OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA	Came to Hand Date/Time 4/04/2019 8:11 PM
Manner of Service	Personal	Service Date/Time 4/08/2019 1:59 PM
Documents	CITATION; PLAINTIFFS' ORIGINAL PETITION	Service Fee: \$77.50

I am certified under order of the Judicial Branch Certification Commission to serve process, including citations in Texas. I am not a party to or interested in the outcome of this lawsuit. My information: identification number, birth date, address, and certification expiration date appear below. I received and delivered the Specified Documents to Defendant as stated herein.

On **4/08/2019 at 1:59 PM**: I served **CITATION** and **PLAINTIFFS' ORIGINAL PETITION** upon **OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA c/o C T CORPORATION SYSTEM, REGISTERED AGENT** by delivering 1 true and correct copy(ies) thereof, with **OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA c/o C T CORPORATION SYSTEM, REGISTERED AGENT**, Who accepted service, with identity confirmed by subject stating their name, a black-haired white female approx. 25-35 years of age, 5'6"-5'8" tall and weighing 140-160 lbs at **1999 BRYAN STREET SUITE 900, DALLAS, TX 75201-3136**.

My name is: **Kurtis Isokpan**. My date of birth is: **10/02/1992**

My address is: **4461 Sierra Dr., Grand Prairie, TX 75052, USA**.

My process server identification # is: **PSC-14185**. My Certification expires: **3/31/2020**.

I declare under penalty of perjury that the foregoing, **RETURN OF SERVICE**, is true and correct.

Dallas

Executed in _____ county, TX.


Kurtis Isokpan

April 10, 2019

Date Executed





I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 1, 2019

Certified Document Number: 84743829 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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CAUSE NO. 201921760

LAWRENCE AND JOAN SINGER	§	IN THE DISTRICT COURT
VS.	§	165 TH JUDICIAL DISTRICT
OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA	§	HARRIS COUNTY, TEXAS

**DEFENDANT OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH
CAROLINA'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA, Defendant in the above-styled and numbered cause, and make and files this, their Original Answer in reply to Plaintiffs' Petition, and for such answer would respectfully show unto the Court the following:

1.

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies the allegations contained within Plaintiffs' Petition and demands strict proof thereon by a preponderance of the credible evidence in accordance with the laws of the State of Texas.

2.

Pleading further and without waiver of the above, Defendant denies the occurrence of all conditions precedent to Plaintiffs' claim. Without limiting the foregoing, Defendant denies that there has been full compliance with all terms and conditions of the insurance policy at issue as required prior to Plaintiffs bringing suit, including, but not limited to, the requirement that payment is only due after agreement is reached on the amount of loss or an appraisal award has been made.

3.

Pleading further and without waiver of the above, Defendant requests that this Court compel mediation pursuant to TEXAS INSURANCE CODE § 541.161(a). This mediation is required under the Texas Insurance Code and Texas Business & Commerce Code. TEX. INS. CODE § 541.161(b).

4.

Additionally, the insurance policy pertaining to the claims asserted by the Plaintiffs include a specific “Appraisal” clause which sets forth the procedure in the event of a disagreement of the amount of the loss. Specifically, the policy requires that, upon written request, the property must be appraised by each party’s own disinterested appraiser. In the event of a disagreement in the appraisal, the differences are submitted to an umpire for determination. Compliance with the appraisal process is a condition precedent to any suit against Defendant insurance company. Defendant insurance company was deprived of the opportunity to invoke the appraisal clause prior to suit. Further, the lawsuit prevented Defendant insurance company from attempting to resolve the alleged problems, reaching an impasse or invoking the appraisal clause, if necessary. Defendant insurance company reserves the contractual right to invoke this clause and that the property be appraised according to the terms of the applicable insurance policy if the parties reach an impasse. Defendant insurance company has not waived and is not waiving this provision and may assert it in the future.

5.

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendant hereby gives actual notice to Plaintiffs that any and all documents and materials produced in response to written discovery may be used as evidence in this case; and, that any such materials may be used as

evidence against the party producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the document and/or materials produced in discovery.

6.

Requests for Disclosure

At the time required by law or the Rules, the Defendant requests the Plaintiffs to respond to all of the matters in TRCP 194.2.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon final hearing hereof, that Plaintiffs not recover against Defendant and that Defendant goes hence with its costs without day and for such other and further relief, at law or in equity, to which Defendant may justly show itself entitled to receive.

Respectfully submitted,

Gault, Nye & Quintana, L.L.P.
P.O. Box 6666
Corpus Christi, Texas 78466
(361) 654-7008
(361) 654-7001 Telecopier
mwest@gnqlawyers.com

By: /s/ Mikell A. West
Mikell A. West
State Bar No. 24070832

ATTORNEY FOR DEFENDANT OCCIDENTAL
FIRE & CASUALTY COMPANY OF NORTH
CAROLINA

CERTIFICATE OF SERVICE

I, Mikell A. West, hereby certify that on the 25th day of April, 2019, a true and correct copy of the above and foregoing document was served upon the following counsel as indicated:

Attorneys for Plaintiffs

Sean H. McCarthy

P. Griffin Bunnell

Williams Kherkher Hart Boundas LLP

Email: smccarthy@williamskherkher.com; gbunnell@williamskherkher.com

Andrew C. Cook

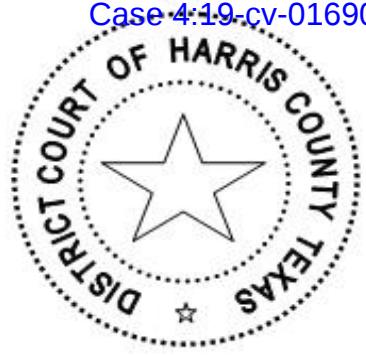
The Cook Law Firm, PLLC

Email: acc@texinsurancelaw.com

VIA E-FILING

/s/ Mikell A. West

Mikell A. West



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 1, 2019

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Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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CAUSE NO. 201921760

LAWRENCE AND JOAN SINGER § IN THE DISTRICT COURT
§
VS. § 165TH JUDICIAL DISTRICT
§
OCCIDENTAL FIRE & CASUALTY §
COMPANY OF NORTH CAROLINA § HARRIS COUNTY, TEXAS

DEFENDANT'S DEMAND FOR JURY

COMES NOW, OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA, Defendant in the above-referenced cause, and demands a trial by jury. The jury fee was previously paid by Plaintiffs.

Respectfully submitted,

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By: /s/ Mikell A. West
Mikell A. West
State Bar No. 24070832

ATTORNEY FOR DEFENDANT OCCIDENTAL FIRE & CASUALTY COMPANY OF NORTH CAROLINA

CERTIFICATE OF SERVICE

I, Mikell A. West, hereby certify that on the 25th day of April, 2019, a true and correct copy of the above and foregoing document was served upon the following counsel as indicated:

Attorneys for Plaintiffs

Sean H. McCarthy

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VIA E-FILING

/s/ Mikell A. West

Mikell A. West



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this May 1, 2019

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